UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 CR 643

DEREK GALANIS,

Defendant.

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New York, N.Y.
August 15, 2016
12:15 p.m.

Before:

HON. KEVIN N. FOX,

Magistrate Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
REBECCA MERMELSTEIN
BRIAN BLAIS
Assistant United States Attorney

ANTHONY J. BRASS
Attorney for Defendant

ALSO PRESENT: SHANNON BIENIEK, FBI

(Case called)

THE COURT: Good afternoon to all. This matter is scheduled for a pleading proceeding.

Are both parties ready to proceed?

MS. MERMELSTEIN: Yes, your Honor.

MR. BRASS: Yes, your Honor.

THE COURT: Very well. Mr. Galanis, I have before me indictment S1 15 CR 643, a multi-count indictment. We shall be focusing on Counts One and Two of the indictment during this afternoon's proceeding.

You have a right to have this afternoon's proceeding presided over by a district judge. You may, if you wish, consent to have a magistrate judge preside this afternoon's proceeding.

In that connection, I have before me a document which is headed "Consent to Proceed Before a United States Magistrate Judge on a Felony Plea Allocution."

Mr. Cangelosi, will you swear the defendant, please.

(Defendant sworn)

THE COURT: Mr. Galanis, I want to show you the consent form about which I was speaking.

Do you recognize the document?

THE DEFENDANT: Yes, sir.

THE COURT: Did you have an opportunity to review it with your attorney?

THE DEFENDANT: Yes, sir, I did.

THE COURT: Is there anything contained in the consent form that you do not understand?

THE DEFENDANT: No. I understand all of it.

THE COURT: Do you acknowledge that it explains in greater detail what I mentioned to you a moment ago about your right to have this proceeding presided over by a district judge and that, further, by signing the document, you are agreeing that a magistrate judge may preside over this afternoon's proceeding?

THE DEFENDANT: Yes, I do.

THE COURT: Is that your signature on the consent form?

THE DEFENDANT: Yes, it is.

THE COURT: Did anyone force you to sign the document?

THE DEFENDANT: No, they did not.

THE COURT: Let me turn my attention to your counsel.

Mr. Brass, is that your signature on the consent form?

MR. BRASS: It is.

THE COURT: Very well. Let me turn my attention to the consent form, and then we'll continue.

Mr. Galanis, will you state your full name, please.

THE DEFENDANT: Derrick Meyer Galanis.

THE COURT: In the last 24 hours, have you consumed any medicine, alcohol or drugs that would affect your ability to understand what you're doing here today?

THE DEFENDANT: No, I am not.

THE COURT: Are you under the care of a physician or psychiatrist for any condition?

THE DEFENDANT: Pretrial had me see a psychiatrist, your Honor.

THE COURT: Is there anything about that interaction that would affect your ability to understand what you are doing here today?

THE DEFENDANT: There is not.

THE COURT: Have you ever been treated for alcoholism or drug addiction?

THE DEFENDANT: I took a drug program, your Honor, before.

THE COURT: Approximately how long ago was it that you were involved in that program?

THE DEFENDANT: About 10 years.

THE COURT: Is there anything about your involvement in that program that would affect your ability to understand what you're doing here today?

THE DEFENDANT: No, sir.

THE COURT: Do you feel all right today?

THE DEFENDANT: Yes, sir.

THE COURT: What is the extent of your education, sir?

THE DEFENDANT: I have a bachelor's degree in history.

THE COURT: Have you received a copy of indictment S1 15 CR 643?

THE DEFENDANT: I have.

THE COURT: Very well.

Mr. Cangelosi, will you arraign the defendant.

THE DEPUTY CLERK: Mr. Galanis, have you seen a copy of this indictment?

THE DEFENDANT: Yes, sir, I have.

THE DEPUTY CLERK: Have you discussed it with your attorney?

THE DEFENDANT: Yes, I have.

THE DEPUTY CLERK: Would you like me to read the indictment to you?

THE DEFENDANT: No, I would not.

THE DEPUTY CLERK: How do you plead?

THE DEFENDANT: Guilty.

THE COURT: Mr. Galanis, I understood that you and your attorney and a representative from the government had reached certain agreements and understandings whereby you would tender a plea of guilty to a limited number of counts in the indictment.

Is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: So, when you indicated a moment ago that you were pleading guilty to the indictment, you did not mean to communicate that you were pleading guilty to all of the charges in the indictment.

Is that correct?

THE DEFENDANT: That's correct, sir.

THE COURT: Very well.

I indicated to you earlier that we would be focusing on Counts One and Two of the indictment, S1 15 CR 643.

With respect to Counts One and Two of the indictment, have you had sufficient opportunity to speak with your attorney about those charges and how you wish to plead to them?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Are you satisfied with the assistance that your attorney has rendered to you in connection with this matter?

THE DEFENDANT: Very much so.

THE COURT: Are you ready to plead to Counts One and Two of indictment S1 15 CR 643?

THE DEFENDANT: Yes, your Honor, I am.

THE COURT: What is your plea to Counts One and Two of that indictment? Guilty or not guilty?

THE DEFENDANT: Guilty, your Honor.

THE COURT: Are you a United States citizen?

THE DEFENDANT: I am.

THE COURT: Do you understand that by pleading guilty to the offenses set forth at Counts One and Two of the indictment, which are felony offenses, you may be giving up valuable civil rights that you possess?

THE DEFENDANT: Yes, your Honor.

THE COURT: Among them, the following: The right to vote; the right to hold public office; the right to serve on a jury; the right to possess any type of firearm, including rifles and shotguns; the right to be considered for certain types of employment; and the right to possess or obtain certain professional licenses.

THE DEFENDANT: Yes, your Honor.

THE COURT: I have to determine whether your plea of guilty to Counts One and Two of indictment S1 15 CR 643 is being made voluntarily and whether you understand fully the nature of the charges made against you in those two counts of the indictment and the possible consequences of your plea. So I shall be asking you additional questions.

I first want to ensure that you understand the nature of the charges made against you at Counts One and Two of the indictment.

Count One of the indictment charges that you conspired with others to commit securities fraud in violation of Title 18, U.S. Code, Section 371.

The law provides as a maximum penalty for the offense set forth at Count One of the indictment the following:

A maximum term of imprisonment of five years; a maximum term of supervised release three years; a maximum fine pursuant to Title 18 U.S. Code, Section 3571, the greater of $250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than yourself resulting from the offense, and a mandatory $100 special assessment.

If you are sentenced to a term of supervised release and violate the terms and conditions of that supervised release such that it is revoked, you expose yourself to serving in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision.

Mr. Galanis, do you understand the nature of the charge against you in Count One of the indictment?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you also understand the range of penalties, including the maximum sentence, to which you are potentially exposing yourself by your plea?

THE DEFENDANT: I do, your Honor.

THE COURT: Count Two of the indictment charges you with securities fraud in violation of Title 15 U.S. Code, Sections 78J(b), 78ff, Title 17 of the Code of Federal Regulations, Section 240. 10(b)-5, and Title 18, U.S. Code, Section 2.

Section 2 of Title 18 of the United States Code makes it an offense for a person to aid or abet another in the commission of a crime.

The law provides for the maximum penalties for the offense set forth at Count Two of the indictment the following: A maximum term of 20 years' imprisonment; a maximum term of supervised release of three years; a maximum fine pursuant to Title 15 U.S. Code, Sections 78ff and Title 18, U.S. Code, Section 3571 of the greatest of $5,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than yourself resulting from the offense, and a mandatory $100 special assessment. You are also subject to an order of restitution.

If you are sentenced to a term of supervised release with respect to Count Two of the indictment and violate the terms of the supervised release such that it's revoked, the same would befall you as I discussed with you with respect to Count One. So I shall not repeat that to you.

Sir, do you understand the nature of the charge made against you at Count Two of the indictment?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you also understand the range of penalties, including the maximum sentence to which you are potentially exposing yourself to Count Two of the indictment?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that you have a right to plead not guilty and to have a jury trial only charges contained at Counts One and Two of the indictment?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that if you plead not guilty and go to trial, the burden would be upon the government to prove that you are guilty beyond a reasonable doubt?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that at a trial, you would be presumed innocent until the government proved your guilt beyond a reasonable doubt?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that at such a trial and at every other stage of the proceedings, you would have the right to be represented by an attorney and, if necessary, that the Court would appoint an attorney to represent you?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that at a trial, you would have the right to testify, to confront and question any witnesses who might testify against you, and the right not to be forced to incriminate yourself? That is, you do not have to be a witness against yourself.

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that at a trial, you would be entitled to call witnesses to testify and to compel the attendance of witnesses?

THE DEFENDANT: I do.

THE COURT: Do you also understand that if you plead guilty, there will be no trial of any kind so that you give up your right to a trial, and the only remaining step will be for the assigned district judge to sentence you?

THE DEFENDANT: I do, your Honor.

THE COURT: Sir, are you certain that you understand the nature of the charges made against you at Counts One and Two of the indictment?

THE DEFENDANT: I am certain, your Honor.

THE COURT: And are you certain that you understand the range of penalties, including the maximum sentence to which you are potentially subjecting yourself by your plea?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that the sentencing judge may be obligated to impose a special assessment upon you?

THE DEFENDANT: I am, your Honor.

THE COURT: Have you and your attorney talked about the sentencing commission guidelines which are advisory only and how they may inform the sentence to be imposed upon you?

THE DEFENDANT: I have, your Honor.

THE COURT: Do you understand that in determining your existence, the sentencing judge is obligated to calculate the applicable sentencing guidelines range and possible departures under the sentencing guidelines?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that in addition to the factors set forth in the Sentencing Commission guidelines, the sentencing judge will also consider factors found at 18 U.S. Code, Section 3553 in determining what an appropriate sentence might be for you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that parole has been abolished and, if you are sent to prison, you will not be released on parole?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you understand that the answers you give to me today are under oath and may in the future be used against you in a prosecution for perjury or false statement if you do not tell the truth to the Court?

THE DEFENDANT: I do, your Honor.

THE COURT: Sir, do you still wish to plead guilty to Counts One and Two of indictment S1 15 CR 643?

THE DEFENDANT: I do.

THE COURT: Have any threats been made to you by anyone to influence you to plead guilty?

THE DEFENDANT: No, your Honor.

THE COURT: Have any promises been made to you concerning the sentence that you will receive?

THE DEFENDANT: No, your Honor.

THE COURT: What are the elements of the offenses set forth in Counts One and Two of the indictment?

MS. MERMELSTEIN: The elements of Count One, conspiracy to commit securities fraud, are, first, the existence of a conspiracy, that is, the existence of an agreement or understanding to commit the unlawful object of the conspiracy, here, securities fraud; second, that the defendant willfully and knowingly became a member of the conspiracy with the intent to further its illegal purpose; and, third, that any one of the conspirators knowingly committed at least one overt act in the Southern District of New York.

The object of the conspiracy, substantive securities fraud, which is also charged in Count Two, has the following elements:

First, that in connection with the purchase or sale of stock or shares in a company, the defendant did any one or more of the following: Employed a device, scheme, or artifice to defraud or made an untrue statement of material fact or omitted to state a material fact which made what was said under the circumstances misleading or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon a purchaser or seller;

Second, the defendant acted knowingly, willfully, and with the intent to defraud;

And, third, that the defendant used any means or instrument of transportation or communication in interstate commence or the use of the mails in furtherance of the fraudulent conduct.

THE COURT: Thank you.

Mr. Galanis, having heard the elements of the offenses set forth at Counts One and Two of the indictment, is it still your desire to tender a plea of guilty?

THE DEFENDANT: It is, your Honor.

THE COURT: I understand that you and your attorney and representatives of the government have reached certain agreements and understandings in connection with your tender of a plea of guilty, and those agreements and understandings are set forth in a letter dated August 5, 2016, addressed to Anthony J. Brass, your attorney. I have a copy of that document before me which I shall show you.

Do you recognize the document, Mr. Galanis?

THE DEFENDANT: I do, your Honor.

THE COURT: Did you have an opportunity to review it with your attorney?

THE DEFENDANT: I did, your Honor.

THE COURT: Is there anything contained in the document which you do not understand?

THE DEFENDANT: No, there's not, your Honor.

THE COURT: In addition to the offenses that are recited in the indictment, the indictment also has a forfeiture allegation through which the government has indicated will seek to recoup from you the proceeds of illegal conduct that's described in the indictment.

Are you aware that the indictment contains a forfeiture allegation, sir?

THE DEFENDANT: I am, your Honor.

THE COURT: In the August 5, 2016, writing addressed to your attorney, there is text through which you admit the forfeiture allegation with respect to Counts One and Two of the indictment.

Are you aware that the August 5, 2016, writing has such text, sir?

THE DEFENDANT: Yes, I am, your Honor.

THE COURT: The writing also contains an analysis of how the Sentencing Commission guidelines might apply to your case.

Are you aware of that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that notwithstanding the analysis of the guidelines in the August 5, 2016, writing, the impact, if any, that the sentence commission guidelines may have on the sentence to be imposed upon you is left solely to the discretion of the sentencing judge?

THE DEFENDANT: Yes, your Honor.

THE COURT: There's also text in the August 5, 2016, writing about which we have been speaking that constricts your ability to appeal from or collaterally attack the judgment of conviction or sentence that might be imposed upon you.

Are you aware of that, sir?

THE DEFENDANT: I am, Your Honor.

THE COURT: There's also text in that same writing that constricts your ability to seek a sentence modification under Title 18 of the U.S. Code, Section 3582(c).

Are you aware of that, sir?

THE DEFENDANT: I am, your Honor.

THE COURT: I want to show you the last page of the August 5 writing about which we've been speaking.

Is your true signature on that page, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Did anyone force you to sign the document?

THE DEFENDANT: No, they did not.

THE COURT: I'm going to turn my attention to your counsel again.

Is your signature also at the last page of the document?

MR. BRASS: It is, your Honor.

THE COURT: And have representatives of the government signed the last page of the document?

MS. MERMELSTEIN: Yes, your Honor.

THE COURT: Mr. Galanis, other than the understandings and agreements that you and your attorney and representatives of the government have made and reached that are outlined in the August 5, 2016, writing about which we have been speaking, have any other agreements or understandings been made or reached with you in connection with your tender of a plea of guilty to Counts One and Two of the indictment?

THE DEFENDANT: No, your Honor.

THE COURT: Sir, is your plea being made voluntarily, that is, of your own free will?

THE DEFENDANT: Yes.

THE COURT: Did you commit the offenses set forth at Counts One and Two of indictment S1 15 CR 643?

THE DEFENDANT: I did, your Honor.

THE COURT: Would you tell me in your own words what it is that you did that makes you believe yourself guilty of the offenses set forth at Counts One and Two of the indictment.

THE DEFENDANT: I recruited a foreign nominee to hold Gerova shares without purpose, and I did so knowing that it was a New York Stock Exchange-listed company in New York.

THE COURT: When you engaged in the conduct that you just described, did you do that pursuant to an agreement that you had with another person or persons?

THE DEFENDANT: Yes, your Honor. I was conspiring with several people.

THE COURT: When or approximately when was it that you engaged in the conduct that you just described?

THE DEFENDANT: I think it was around the summer of 2010, your Honor.

THE COURT: In connection with the offense set forth at Count Two of the indictment, it is alleged, among other things, that certain statements of material facts were either omitted or untrue.

What, if anything, can you tell me in connection with those allegations?

THE DEFENDANT: I'm sorry, your Honor. I don't understand the question.

THE COURT: With respect to Count Two of the indictment which charges securities fraud, it is alleged, among other things, that material facts were omitted from statements that were made or that untrue statements were made in connection with the activities described in Count Two.

What, if anything, can you tell me about that?

THE DEFENDANT: Yes, your Honor. I recruited a foreign nominee with having no value or purpose to acquire that stock.

THE COURT: In doing so, were there statements that were untrue that were made? Or were there statements that were omitted to being made or should have been made in light of the circumstances that are described at Count Two of the indictment?

MS. MERMELSTEIN: Your Honor, if I could perhaps clarify.

THE COURT: Just one moment.

THE DEFENDANT: Yes, there were, your Honor, I believe.

THE COURT: Is there some doubt in your mind?

THE DEFENDANT: No. There's no doubt, your Honor.

THE COURT: What is it that you wanted to clarify?

MS. MERMELSTEIN: I apologize, your Honor. Just that the securities fraud elements permit false statements to be one of the ways the government can prove --

THE COURT: I indicated that among other things that those were among the allegations.

MS. MERMELSTEIN: I just wanted to clarify that this defendant is not the defendant who made the false statements concerning the purchases of the issuance of the Gerova shares. Other codefendants may have made the statements which may have been his confusion.

THE COURT: When you engaged in the conduct about which you have been speaking, Mr. Galanis, did you know that what you were doing was wrong?

THE DEFENDANT: I did, your Honor.

THE COURT: In connection with the activities that you've been discussing, can you tell me whether either the mails were used or some other instrumentality involving commerce, interstate commerce, was involved.

THE DEFENDANT: I used the Internet, your Honor.

THE COURT: Are there any questions the government would have me put to Mr. Galanis?

MS. MERMELSTEIN: No, your Honor. I would just proffer, with regard to venue, that Gerova, which was a publicly traded company, traded on the New York Stock Exchange over servers located in the Southern District of New York during parts of the charged period.

THE COURT: Thank you.

Mr. Brass, are you aware of any reason why your client should not plead guilty to Counts One and Two of the indictment?

MR. BRASS: I am not, your Honor.

THE COURT: Is the government aware of any reason why the defendant should not plead guilty to Counts One and Two of the indictment?

MS. MERMELSTEIN: No, your Honor.

THE COURT: If the matter were to proceed to trial, would evidence would the government offer in support of trial to make Counts One and Two?

MS. MERMELSTEIN: The government would prove, your Honor, through documentary evidence, including emails, other communications, witness testimony, including cooperating witness testimony, that the defendant, from approximately 2009 to 2011, participated in a conspiracy to defraud the shareholders of Gerova Financial Group, a publicly traded company, and the investigating public by obtaining undisclosed control over millions of shares of Gerova and then manipulating the market for the stock in order to sell their shares for their personal benefit.

This particular benefit, in particular, recruited Ymer Shahini, a foreign national, to serve as a foreign nominee purportedly holding the Gerova shares which were actually being controlled by Jason Galanis.

John Galanis, Jared Galinis, and other of the codefendants then opened and managed brokerage accounts in the name of Ymer Shahini, affected the sale of Gerova stock which could not be legally sold in the United States from the Shahini accounts, and received and concealed the proceeds.

As I mentioned, at various times during the conspiracy, Gerova shares traded on servers located in the Southern District of New York on the New York Stock Exchange.

THE COURT: The documents to which you made reference -- can you describe for me in a general way what these documents are.

MS. MERMELSTEIN: Yes, your Honor. There is, for example, significant email communication between this defendant and Ymer Shahini, the foreign nominee, concerning his recruitment to serve as the foreign nominee, the plans to have him do so, communications between Ymer Shahini and other defendants concerning opening of brokerage accounts and the disposition of the shares.

There are also various documents that were constructed in an attempt to cover up or justify the issuance of shares to Shahini, including fraudulent consulting agreements and warrant agreements, that purported to give a legitimate reason for the issuance of the shares when there was, in fact, no legitimate reason for the issuance of the shares.

THE COURT: With respect to the witness testimony that you indicated would be provided at trial, can you give me, in a general way, a sense of what the witness or witnesses would say at trial.

MS. MERMELSTEIN: Yes, your Honor. The government would call, for example, a cooperating witness who would testify that he agreed to engage in matched trading with various of the codefendants in order to artificially inflate the price of Gerova shares and that he did so in return for financial benefits which he did not disclose to his investment advising clients.

The government would obviously call many document custodians to establish the foundation of the emails and communications.

The government would call witnesses who were employed by or on the board of directors of Gerova itself who would testify that there was no legitimate basis for the issuance of shares to Ymer Shahini and that they were in fact unaware of such issuance at the time the issuance was made.

The government would call witnesses to establish that the consulting agreement Shahini purportedly had, which he did not have -- that the purported reason was that he had made an introduction of an important business relationship to Gerova. The government would call witnesses to prove that in fact someone else made that introduction.

Then the government would call witnesses from the various brokerage firms who disposed of the shares to discuss the opening of the accounts, the directions for the disposition of the shares, and what they did and did not know about the purpose of those shares.

THE COURT: Thank you.

I'm satisfied that Mr. Galanis understands the nature of the charges made against him at Counts One and Two of indictment at S1 15 CR 643 and that he understands the consequences of his plea of guilty. I'm satisfied that the plea is being made voluntarily and knowingly and that there is a factual basis for the plea.

So I shall report and recommend to the assigned district judge that the plea be accepted.

I'm going to direct that a presentence report be prepared prior to the date of sentence, which will be December 15, 2016, at 11:30 a.m.

In connection with the preparation of that report, the defendant and his counsel shall make themselves available for a meeting with the probation department not later than 14 days from today. The government should present its case summary materials to the probation department not later than 14 days from today.

I shall direct the government to obtain a transcript of the minutes generated during this proceeding and present same to the assigned district judge before the date of sentence.

Is there any request with respect to bail conditions?

MR. BRASS: Your Honor, Mr. Galanis is actually asking to be remanded today.

THE COURT: What are the bail conditions that are extant now?

MR. BRASS: He was placed on electronic monitoring, bracelet, with pretrial services. I believe bonds had been signed by several people.

THE DEFENDANT: Six.

MR. BRASS: Six people.

THE COURT: I'm going to exonerate the bail, and I shall remand Mr. Galanis pending sentencing.

Is there anything else that we need to address?

MS. MERMELSTEIN: No, your Honor.

MR. BRASS: I don't believe so, your Honor. Thank you.

THE COURT: Thank you. Good day.

(Adjourned)